ments made before the erection of the wall, and no express reference was made to such agreement in the subsequent deed of conveyance to the grantee. The authorities are in irreconcilable conflict upon the main proposition involved in the principal case, but it seems that the court has gone to extreme lengths in the application of even "equitable principles."

PRINCIPAL AND SURETY—APPLICATION OF PAYMENTS.—A and B had purchased certain machinery of the plaintiff and had given in payment ten promissory notes maturing at different times, secured by a mortgage upon the property. Contemporaneous with this purchase additional machinery was obtained, for the price of which were given three promissory notes maturing at different times. Defendant became surety upon two of these notes. This additional machinery was covered by the mortgage. It was provided in the mortgage that in case any of the notes became due and were unpaid, the plaintiff might elect to treat all the notes as due, and that, in case the payments were not sufficient to meet all the obligations, the plaintiff might elect as to the application of the payments. A and B failed to make sufficient payments and the plaintiff elected to treat all the notes as due and to have the proceeds applied upon the note of which defendant was not surety. Defendant asked that the payments be applied pro rata, and that his rights as assignee of the mortgage be determined, and that the proceeds of the machinery for which his notes were given to secure be applied to the notes upon which he is surety. *Held,* distribution would be made according to the prayer of the plaintiff. *Advance Thresher Co.* v. *Hogan* (1906), — Ohio —, 78 N. E. Rep. 436.

Where parties have not contracted for the application of payments as they have in this case there are two lines of authority. That the distribution shall be made pro rata see: *Whitehead* v. *Morrill,* 108 N. Car. 65; *Smith* v. *Bowne,* 60 Ga. 484; *Bank* v. *Moore,* 112 N. Y. 543; *Hancock's Appeal,* 34 Penn. (10 Casey) 155; *Pierce* v. *Shaw,* 57 Wis. 316; *English* v. *Carey,* 25 Mich. 178; *Todd* v. *Cremer,* 36 Neb. 430. As illustrating the other doctrine that payments will be made according to maturity, see: *Leavitt* v. *Reynolds,* 79 Iowa 348; *Bank* v. *Tweedy,* 8 Blackford 447; *Thompson* v. *Field,* 38 Mo. 320; *Horn* v. *Bennett,* 135 Ind. 158. Where parties have contracted as in the principal case, full effect will be given to the contract. In *Bank* v. *Covert,* 13 Ohio 243, the court says, "The fund arising from the sale of mortgaged property being insufficient to discharge all the notes must be distributed among them pro rata, unless the terms of the assignment or the circumstances under which it was made, show a different intention of the parties." In the case under discussion just such an intention was shown. In *Robinson* v. *Waddell,* 53 Kan. 402, the defendant sold certain land to X and Y, and took promissory notes maturing at different times for the purchase price. Defendant then sold the notes and became surety on the two maturing first. Upon foreclosure the plaintiff asks to have the proceeds applied to the notes of which defendant was not surety. The court holds that the distribution may be made as plaintiff asks. This case goes as far as the one under discussion, and has not the contractual element that the latter has.